

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 13.03.2019
*CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

+CRP(MD) No.503 of 2019
and
C.M.P.(MD) No.2510 of 2019

#Pandiarajan

... Petitioner/Petitioner/6th plaintiff

vs.

\$Muniyandi

...Respondent/Respondent/5th defendant

PRAYER:~ Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.12.2018 made in I.A.No.185 of 2018 in O.S.No.558 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur.

!For Petitioners : Mr.PT.S.Narendravasan

^For Respondent:

:ORDER

This Civil Revision Petition has been filed to set aside the order dated 17.12.2018 made in I.A.No.185 of 2018 in O.S.No.558 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur.

2.I.A.No.185 of 2018 was filed by the petitioner herein/6th plaintiff for amendment. Originally, in O.S.No.558 of 2014, the

plaintiffs sought for the relief of declaration and permanent injunction against the defendants.

3.The petitioner herein/6th plaintiff contended that the defendants in the above said suit, encroached a portion of the suit property and had made a construction on the same by utilizing the plaintiffs- absent and the said fact came to the plaintiffs- knowledge only on 14.02.2018, when the plaintiffs came to the suit property on the day of -Sivarathiri- that the defendants have made illegal construction by encroaching into the suit property and hence, the plaintiffs sought for an mandatory injunction by way of amendment by removing the construction made by the defendants.

4.The respondent herein/5th defendant in the above said I.A., filed his counter statement stating that already in the written statement, the defendants contended that the first plaintiff in the said suit namely, Ayyam Perumal and his vendors have allotted the suit property to the Sivan temple

and the temple is a public temple and conducting poojas and rituals.

5.Further, the respondent herein/5th defendant contended that the plaintiffs in the said suit never entered into the said property for more than six decades and hence, the proposed amendment of the plaintiffs to include the relief of mandatory injunction and recovery of possession will definitely create a new cause of action and hence, it is not sustainable.

6.From the records, it is seen that the suit in O.S.No.558 of 2014 originally filed for permanent injunction and now the case is posted for examination of the plaintiffs side witnesses and at this stage, the plaintiffs filed the amendment petition stating that the defendants in the said suit have encroached a portion of the suit property and it came to their knowledge only on 14.02.2018 and hence, they filed the amendment application for declaration and mandatory injunction to remove the construction made by the defendants in the suit property and for delivery of possession.

7.The defendants in the said suit filed their written statement, in which, they have stated that even very long back, the said temple was constructed in the suit property and the construction of the temple was very much mentioned in the written statement and when

the plaintiffs denied the title of the defendants in the suit property, they ought to have sought for an amendment at the earliest and hence, the amendment sought by the plaintiffs after a very long time even when it was specifically denied by the defendants at the earliest in their written statement, is not considered by the trial Court.

8.Further, it is relevant to point out that the trial has commenced and the suit is posted for examination of the plaintiffs- side witnesses and therefore, if the plaintiffs have any right over the suit property, they can very well establish the same before the trial Court by examining witnesses and sought for necessary relief.

9.Hence, by observing the fact that the defendants have already stated in their written statement that they have made a construction very long back and there is no new encroachment or occupation by the defendants and hence, the amendment sought by the plaintiffs regarding declaration and mandatory injunction is not proper.

10.In view of the above, the order dated 17.12.2018 made in I.A.No.185 of 2018 in O.S.No.558 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur, does not require and interference of this Court and there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

To

The District Munsif cum
Judicial Magistrate,
Peraiyur.